

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
Rules and Regulations Implementing the)	CG Docket No. 02-278
Telephone Consumer Protection Act of 1991)	
)	
To: The Commission)	

**CALIFORNIA ASSOCIATION OF REALTORS®
PETITION FOR RECONSIDERATION
OF FACSIMILE ADVERTISING RULES**

The California Association of REALTORS® (“C.A.R.”) hereby respectfully petitions the Commission to reconsider its ban on faxing “unsolicited advertisements.” Under 47 C.F.R. § 1.429(b)(3), this petition for reconsideration should be granted because it sets forth facts demonstrating that the do-not-fax rules will severely harm the public’s interest in conducting real estate transactions quickly and efficiently with the help of fax machines. People should be allowed to receive the faxes they ask for or otherwise want. In the particularity required by 47 C.F.R. § 1.429(c), the Commission should: (1) reinstate the “established business relationship” exception to the do-not-fax rules; and (2) allow verbal consent by eliminating the prior written permission requirement for faxing advertisements at 47 C.F.R. § 64.1200(a)(3)(i).

NATURE OF C.A.R.’S INTEREST

C.A.R. is a voluntary not-for-profit trade association whose members consist of local Boards and Associations of REALTORS® and over 126,000 persons licensed as real estate brokers and salespersons by the State of California, as well as affiliate members such as real estate appraisers, title insurers, mortgage lenders, and real estate attorneys. REALTORS® assist members of the public in the process of buying, selling, leasing, and

managing real property. C.A.R. is actively engaged in promoting and establishing reasonable standards governing the respective roles of real estate brokers, agents, and principals in real estate transactions.

ARGUMENT

This is the classic case of throwing the baby out with the bath water. In its vigilant attempt to curb “unwanted faxes,” the FCC has instead banned the fax transmittal of all advertisements absent the recipient’s prior *written* consent, even if the recipient asks for that fax to be sent or wants to receive that fax. This presumably unintentional and excessively expansive definition of “unsolicited advertisements” is so broad in scope that compliance with the new FCC rules will severely hinder the legitimate business practices of C.A.R., its members and affiliates, and their clients. It would be against the public’s interest if consumers are not allowed to receive the faxes they ask for.

Often touted as one of the most important inventions that shaped the modern world, the fax machine has no substitute in its ability to transmit documents quickly, accurately, easily, and inexpensively. The fax machine has become such a mainstay of the real estate industry that you’ll find one in virtually every real estate office and local association of REALTORS® in California. The fax machine is probably used to help complete every single real estate transaction in California.

Let’s say, for example, a married couple lives in Northern California, but owns a home in San Gabriel in Southern California. The homeowners call Lee Listing, a long-time real estate agent in the small community of San Gabriel, and ask Lee to send over the necessary paperwork to list their property for sale. The listing agreement that Lee prepares sets forth what he’ll do to market and sell the property in exchange for a

commission. Does this document advertise the commercial availability or quality of Lee's real estate services? Under the new FCC rules, can Lee fax the listing agreement to the homeowners for signature? What if Lee wants to show the homeowners a flyer he prepared for another property he's marketed? Can Lee fax that sample flyer?

Other examples abound. Can a listing agent fax a facts sheet of a home for sale to a prospective buyer or that buyer's agent? Can a mortgage broker fax the lender's rate sheet to a borrower? Can a property manager fax a rental agreement to a tenant for signature? Can a title insurance company fax a preliminary title report to a buyer? Can an insurance agent fax a written insurance quote to a homeowner? Can a trade association fax a membership renewal notice or an announcement of an upcoming trade show to its members? All these people should be allowed to receive the faxes they request or otherwise want.

The FCC nevertheless requires anyone receiving "any material advertising the commercial availability or quality of any property, goods, or services . . ." to provide written consent before any of these faxes are sent (64 C.F.R. §§ 64.1200(a)(3) and (f)(10)). The FCC is apparently mindful of the burden of obtaining written consent:

Advertisers may obtain consent for their faxes through such means as direct mail, websites, and interaction with customers in their stores. . . . For example, a company that requests a fax number on an application form could include a clear statement indicating that, by providing such fax number, the individual or business agrees to receive facsimile advertisements from that company. Such statement, if accompanied by the recipient's signature, will constitute the necessary prior express permission

Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991,
CG Docket No. 02-278, Report and Order, FCC 03-153 at para. 191 (rel. July 3, 2003).

Unfortunately, none of these suggested methods of obtaining consent are workable for C.A.R., its members, and their clients. First, if any of the senders in the above examples were forced to obtain written consent by direct mail, why bother? They might as well mail whatever it was they were planning to fax in the first place, which may cause them to lose valuable time and money. Second, websites are not a viable option because many people don't have access to computers or the special hardware or software for obtaining electronic signatures of consent. Third, none of the senders in the above examples are in the retail business with "stores" that their fax recipients would generally frequent.

Fourth, C.A.R. and its local boards or associations of REALTORS® could, as the FCC suggests, obtain written consent on the membership application forms for new members. However, C.A.R. would still have to collect and track over 126,000 signatures for its existing members! Moreover, most people in the real estate industry do not have application forms on file before their clients request a fax to be sent.

Unless changed, the new do-not-fax rules as written are highly susceptible to abuse. After the new rules come into effect, a member of the public could simply call a real estate agent, mortgage broker, property manager, or other real estate professional, and ask for certain advertising materials to be faxed. If the real estate professional sends the fax without first obtaining written consent, then, under the FCC's expansive and easily misunderstood definition of "unsolicited advertisements," the real estate professional could immediately be sued for \$500 by the caller (47 U.S.C. § 227(b)(3)), and forced to pay a penalty of \$11,000 (47 C.F.R. § 1.80(b)), even though that fax was not, in any stretch of the imagination, either "unsolicited" or "unwanted."

* * * *

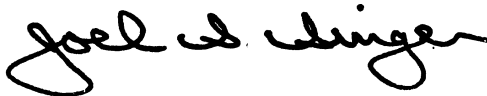
For the reasons stated above, the California Association of REALTORS® urges the Commission to change its recently adopted “unsolicited fax” rules to allow people to receive the faxes they ask for, such as when there is an established business relationship.

Respectfully submitted,

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Dated: August 25, 2003

SERVICE

Courtesy copies of the foregoing Petition for Reconsideration were delivered by first-class mail through the U.S. Postal Service this 25th day of August, 2003, as follows:

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